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ALCO PRODUCTS, INCORPORATED

AND

UTAH RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT

DATED AS OF JULY 1, 1955

One 1600 H. P. Diesel Electric Road Switching Locomotive

ALCO PRODUCTS, INCORPORATED

AND

UNITED STATES SMELTING REFINING AND MINING COMPANY

AGREEMENT AND ASSIGNMENT

DATED AS OF JULY 1, 1955

THIS AGREEMENT dated as of July 1, 1955, by and between ALCO PRODUCTS, INCORPORATED, a corporation organized under the laws of the State of New York with an office in the City and State of New York (hereinafter called the "Manufacturer"), and UTAH RAILWAY COMPANY, a corporation organized under the laws of the State of Utah with an office in the City of Salt Lake City, State of Utah (hereinafter called the "Railroad"),

WITNESSETH:

In consideration of the mutual promises, covenants and agreements hereinafter set forth the parties hereto do hereby agree as follows:

1. CONSTRUCTION AND SALE. The Manufacturer will construct, sell and deliver to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery as hereinafter provided and pay therefor as hereinafter set forth a locomotive (hereinafter referred to as "Locomotive") as follows:

> One (1) 1600 H. P. (6-motor) Diesel Electric Road Switching Locomotive, bearing the Railroad's Road Number 306, as described by the Manufacturer's Specification No. E-1663-A and in accordance with modifications thereof agreed upon in writing between the Railroad and the Manufacturer.

2. DELIVERY. The Manufacturer will deliver the Locomotive to the Railroad F. O. B. the Manufacturer's works at Schenectady, New York, not later than October 31, 1955.

On delivery of the Locomotive by the Manufacturer the Railroad will assume the responsibility and risk of loss with respect to the Locomotive so delivered.

The Manufacturer's obligation as to time of delivery is subject, however, to delays and/or defaults resulting from any and all causes beyond the Manufacturer's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes or other labor conditions, accidents, fire, flood, explosion, dam-

age to plant, equipment or facilities, epidemics, quarantine restrictions, delays or defaults of sub-contractors, failure to receive necessary materials or supplies, inability to obtain fuel, light or power, or absence of usual means of transportation.

The Railroad shall accept the Locomotive at or before delivery at the Manufacturer's works at Schenectady, New York. The Locomotive prior to acceptance shall be inspected by an authorized representative of the Railroad. If such Locomotive conforms to specifications such representative of the Railroad shall execute a certificate of acceptance (hereinafter called the "Certificate of Acceptance") stating that such Locomotive has been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of this agreement. Such Certificate of Acceptance shall constitute conclusive evidence that the Locomotive conforms to specifications and is acceptable to the Railroad in all details. The Certificate of Acceptance shall be delivered to the Manufacturer at or before the time of the delivery of the Locomotive to the Railroad.

The Manufacturer will furnish a competent service engineer to superintend the placing of the Locomotive in working condition. The Railroad will provide free of charge each such service engineer as well as any person that may be provided by the Manufacturer at the Railroad's request to instruct the Railroad's engineers in the operation of the Locomotive or that may be sent by the Manufacturer to investigate complaints regarding the Locomotive, with all necessary labor, materials, supplies and transportation on lines owned or controlled by the Railroad.

3. Purchase Price. The purchase price of the Locomotive, F. O. B. the Manufacturer's works at Schenectady, New York, with freight allowed to the Railroad's tracks at Utah Railway Junction, Utah, shall be Two Hundred Two Thousand One Hundred Twelve Dollars and Seventy-five cents ($202,112.75).

Conditional only upon the receipt and acceptance of the Locomotive, which shall be conclusively presumed from the execution of the Certificate of Acceptance, the Railroad hereby promises to pay to the Manufacturer at its office, 30 Church Street, New York 8, N. Y., or at

such bank or trust company in the United States of America as the Manufacturer may designate, the aforesaid purchase price of the Locomotive as follows:

For the Locomotive Two Hundred Two Thousand One Hundred Twelve Dollars and Seventy-five Cents ($202,112.75) representing the purchase price of such Locomotive, shall be payable in 10 consecutive yearly installments, the first of which installments shall be in the amount of Twenty Thousand Two Hundred Twenty-two Dollars and Seventy-five Cents ($20,222.75) and each succeeding installment shall be in the amount of Twenty Thousand Two Hundred Ten Dollars ($20,210.00), together with interest at the rate of 3% per annum from the date of arrival of such Locomotive at Utah Railway Junction, Utah, on the balance of the purchase price of such Locomotive remaining unpaid, the first installment of principal and interest to be payable on October 15, 1956, and subsequent installments to be payable on the fifteenth day of October of every year thereafter.

The Railroad will, to the extent permitted by law, pay interest at the rate of six per cent (6%) per annum upon all such amounts, principal and interest, remaining unpaid after the same become due and payable pursuant to the terms hereof.

All payments provided for in this agreement will be made by the Railroad in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

In the event of any change or modification made in the specifications the amount by which such change or modification increases or decreases the cost of the Locomotive shall be added to or subtracted from, as the case may be, the price of the Locomotive. The initial installment to be paid by the Railroad to the Manufacturer as provided herein shall be increased or decreased accordingly.

The price stated above is based on present day manufacturing costs. In the event of an increase in manufacturing costs on account of increases in labor or material or both, before completion of the Locomotive, the Manufacturer may notify the Railroad in writing

of the increased price for such Locomotive and the Railroad shall have the option in such case of terminating this agreement by notice in writing to the Manufacturer within fifteen (15) days after receipt by the Railroad of the aforesaid notice of price increase. Unless the Railroad so notifies the Manufacturer, it shall be conclusively presumed that each increase is acceptable to the Railroad. The price as thus increased shall become the price of such Locomotive. The amount of any such increases shall be added to the initial installment for the Locomotive.

Inasmuch as such purchase price includes freight charges based on present day rates, in the event of an increase or decrease in freight charges between Chicago, Illinois, and Utah Railway Junction, Utah, applicable to the Locomotive, the purchase price of such Locomotive shall be increased or decreased accordingly.

The Railroad may prepay at any time any sum of the principal in the following amounts and on the following conditions:

The Railroad may prepay upon the due date of any installment of the purchase price hereunder any sum of the principal in an amount equal to one or more yearly installments remaining unpaid, together with interest accumulated to the date of such payment on such sum so prepaid. All such principal sums so prepaid shall be applied toward the payment of installments in inverse order of maturity.

4. Taxes. All payments to be made by the Railroad hereunder will be free of expenses to the Manufacturer for collection or other charges and of the amount of any local, state or federal taxes (other than income taxes) or licenses hereafter levied or imposed upon, or measured by, this agreement and/or any sale, use, payment, shipment or delivery under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay in addition to the purchase price of the Locomotive. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Locomotive or for the use thereof or upon the earnings arising therefrom or the operation thereof or upon the Manufacturer by reason of its ownership

thereof by any jurisdiction in which the Locomotive is operated by the Railroad and will keep at all times all and every part of the Locomotive free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer. If any such expenses or taxes shall have been paid by the Manufacturer, the Railroad shall reimburse the Manufacturer on presentation of invoice.

5. TITLE TO THE EQUIPMENT. The Manufacturer shall and hereby does retain the full legal title to and property in the Locomotive until the Railroad shall have made all of the payments and shall have kept and performed all of the covenants in this agreement provided to be made, kept or performed by the Railroad notwithstanding the delivery of the Locomotive to and the possession and use thereof by the Railroad as herein provided.

The Railroad so long as it shall not be in default under this agreement shall be entitled to the possession and use of the Locomotive as herein provided, subject to the terms and conditions herein contained.

The Railroad will cause the Locomotive to be kept numbered with its identifying road number and will keep and maintain, plainly, distinctly, permanently and conspicuously placed and fastened, on each side of the Locomotive, a metal plate bearing the name of the Manufacturer or of the Manufacturer's assignee, as the case may be, in letters of the largest size required by law in any of the states in which the Locomotive shall be operated, but in any event in letters not less than one inch in height followed by the word "Owner" or other appropriate words designated by the Manufacturer. The Railroad will not place the Locomotive in operation or exercise any control or dominion over any part thereof until the metal plates so marked have been attached on both sides of the Locomotive. The Railroad will not change the road number of the Locomotive, except in accordance with a statement of a new road number to be substituted therefor, which shall previously have been filed with the Manufacturer by the Railroad and consented to by the Manufacturer and filed and recorded in each public office where this agreement (or any supplements hereto) shall have been filed and recorded.

Except as above provided the Railroad will not allow the name of any person, association or corporation to be placed on the Locomotive

or any replacement thereof as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Locomotive to be lettered with appropriate words or marks for convenience of identification of the Railroad's interest therein.

When and only when the Manufacturer has been paid the full purchase price of the Locomotive, together with interest and any and all other payments as herein provided, and all of the Railroad's covenants and conditions herein contained have been performed by the Railroad, absolute right to the possession of, title to and property in the Locomotive shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer except that the Manufacturer will, if requested by the Railroad so to do, execute and deliver to the Railroad a bill of sale of the Locomotive transferring the title to and property in it to the Railroad free of all liens and encumbrances created or retained hereby and will execute for record or for filing in public office such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Locomotive.

6. Replacement. In the event of loss or destruction of or irreparable damage to the Locomotive from any cause whatsoever prior to the payment in full of the total purchase price herein provided together with interest thereon and all other payments required hereby the Railroad shall promptly and fully inform the Manufacturer in regard to such loss, destruction or damage. The Railroad shall at its election promptly pay to the Manufacturer a sum equal to the then unpaid balance applicable to such Locomotive with interest thereon to the date of payment or shall replace each such Locomotive at its own cost with a locomotive of similar type and of substantially as good material or construction as that lost, destroyed or damaged and having a cost or fair value (whichever is less) at least equal to the fair value if in good repair of the Locomotive replaced at the time of replacement. The Railroad will cause any such locomotive to be marked as provided in Article 5 hereof and to be numbered with the same road number as the Locomotive so replaced. Any such replacement of the Locomotive and all and any parts shall constitute acces-

sions to the Locomotive and any replacement of the Locomotive shall be deemed to be specific after acquired property covered by this agreement and in any case such replacement of the Locomotive and parts shall be subject to all of the terms and conditions of this agreement as though part of the original Locomotive delivered hereunder and included in the word "Locomotive" as used in this agreement. Title to such replacement Locomotive shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer (or, if this agreement shall have been assigned, in the name of the assignee or assignees, as the case may be), subject to the provisions hereof.

7. Insurance. The Railroad will at all times and at its own expense keep the Locomotive insured (with loss payable to the Manufacturer or the Railroad as their interests may appear) in a company or companies approved by the Manufacturer against loss, damage or destruction thereof due to fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion in sums and by policies (which shall be delivered to the Manufacturer) adequate at all times to protect the interests of the Manufacturer and the Railroad; provided that the policies for such insurance against wreck, derailment or collision may provide insurance with loss deductible in an amount not exceeding 4% of the purchase price of the Locomotive. Each policy in respect of such insurance shall provide for ten days' prior written notice to the Manufacturer of the cancellation of any of such insurance, and shall further provide that, as to the interest of the Manufacturer, such insurance shall not be altered or impaired by any act or omission of anyone other than the Manufacturer. Any moneys paid under any such insurance policy shall be applied to the then unpaid balance applicable to the Locomotive or shall be applied toward the replacement or repair of such Locomotive. In the event that the moneys are to be applied to such replacement or repair they shall be retained by the Manufacturer until replacement or repair of the Locomotive lost, destroyed or damaged, but upon proof satisfactory to the Manufacturer of such replacement or repair and if the Railroad is not then in default in any of the obligations hereunder the Manufacturer shall pay over such money to the Railroad. Any moneys receivable by or payable to the Railroad from any railroad or

other person or corporation because of loss or destruction of or damage to such Locomotive shall be paid over to the Manufacturer to be held and applied by it as aforesaid. Upon the discharge by the Railroad of all of its obligations under this contract the Manufacturer will without cost to the Railroad transfer to the Railroad all then unexpired policies of insurance.

In the event the Railroad shall fail to keep the Locomotive insured as above provided, the Manufacturer, without impairment of any of its rights and remedies by reason of such default, may, but shall not be required to, obtain appropriate insurance and pay the premium or premiums therefor and in such event the Railroad shall and will reimburse the Manufacturer for the amount of the premium so paid with interest at the rate of 6% per annum thereon from the date of payment.

8. Maintenance and Repair. The Railroad will at all times maintain the Locomotive in good order and repair at its own expense in accordance with the Manufacturer's recommendations in any case involving repair parts, quality of fuel and lubricating oil and any other factors material to and necessary for the proper maintenance and operation of the Locomotive.

9. Manufacturer's Warranty of Workmanship and Material. The Manufacturer guarantees the Locomotive to be at the time of delivery free of defects in workmanship or material. The Manufacturer will repair or replace F.O.B. its works or warehouse any part furnished by it which by reason of defect in workmanship or material requires replacement either within one year after the delivery of the Locomotive to which it is attached or prior to the completion of the first 100,000 miles of normal use and service of such Locomotive, whichever shall first occur; provided, however, that the Railroad notifies the Manufacturer of the defect immediately and accords the Manufacturer an opportunity for verification. The Manufacturer's liability shall not extend to any defect or defects which in its judgment were caused in whole or in part by failure to comply with its operating and maintenance recommendations, by misuse, negligence or accident, or by repairs or alterations not authorized and approved by the Manufacturer. The Manufacturer does not guarantee materials or parts

specified or furnished by the Railroad. The Manufacturer's liability (except as to title) arising out of the supplying of the Locomotive or its use, whether on warranties or otherwise, shall not in any case exceed the cost of repairing or replacing a defective part or parts as herein provided and shall not include transportation charges, the Railroad's labor or materials (except as authorized in writing in advance), loss of use or revenue or any indirect or consequential damages. Upon the expiration of said one year or 100,000 miles of service, whichever shall first occur, all such liability with respect to the Locomotive or any part or parts thereof repaired or replaced by reason of this guaranty shall terminate.

10. Compliance With Laws, Rules and Regulations. Until the total purchase price herein provided for and all other sums of money payable by the Railroad hereunder shall have been fully paid by the Railroad, the Railroad will comply in all respects with all laws of the United States and of the States and Territories in which its operations involving the Locomotive may extend, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotive. In the event that said laws or rules require the alteration of the Locomotive, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules until the total purchase price together with interest and all other payments required hereby shall have been fully paid by the Railroad; provided, however, that the Railroad may, in good faith, contest in any reasonable manner the application of any such law or rule which does not, in the judgment of the Manufacturer, affect the Manufacturer's title in and to the Locomotive.

11. Reports and Inspections. The Railroad will furnish to the Manufacturer, when requested and at least once in every year until the total purchase price together with interest and all other payments required hereby shall have been fully paid by the Railroad, written confirmation that the Locomotive is in service and, if the original Locomotive delivered hereunder has been destroyed and replaced by another Locomotive, a description of such replacement Locomotive,

and the then location of the Locomotive. In addition thereto the Railroad will furnish to the Manufacturer, if requested, once in each year, until the total purchase price together with interest and all other payments required hereby shall have been fully paid by the Railroad, a report of inspection by an authorized representative of the Railroad, or, if the Manufacturer so requests, by a competent disinterested party, satisfactory to the Manufacturer, certifying that said Locomotive has been maintained and is in good order and repair.

The Railroad will promptly and fully inform the Manufacturer of any loss or destruction of the Locomotive and of any substantial repairs made or being made upon it. If requested by the Manufacturer, the Railroad will furnish to the Manufacturer a report of an authorized representative of the Railroad or, if the Manufacturer so requests, of a competent disinterested party, satisfactory to the Manufacturer, covering the nature and extent of any damage to the Locomotive and the satisfactory repair thereof.

The Manufacturer may, but shall be under no obligation to, inspect the Locomotive at any reasonable time or times until the total purchase price together with interest and all other payments required hereby has been fully paid by the Railroad. The Railroad, in so far as it may legally do so, will supply free transportation over its lines to designated agents of the Manufacturer for the purpose of enabling such agents to reach the point or points where the Locomotive is in operation, for the purpose of making such inspection.

12. Use and Location. The Railroad will, after the Locomotive has been accepted by it and until the total purchase price together with interest and all other payments required hereby shall have been fully paid by the Railroad, keep the Locomotive in the State of Utah, provided, however, that the Railroad may with the written consent of the Manufacturer remove the Locomotive to another State upon giving the Manufacturer five (5) days' notice in writing stating where the Locomotive is to be transferred and the route to be followed in the transfer and upon filing, registering and recording this agreement at the Railroad's expense, in and upon full compliance with all laws of such other State or States through which the Locomotive may pass or to which it may be removed to the extent necessary for the pro-

tection of the Manufacturer's title to the Locomotive and its rights under this agreement, and also upon providing the Manufacturer with an opinion of the Railroad's counsel to the effect that such filing, registering and recording meets with the legal requirements of such State or States with respect to the filing, registering or recording of agreements of the character of this agreement.

13. Prohibition Against Liens. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the Locomotive, equal or superior to the title of the Manufacturer therein, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Manufacturer in and to the Locomotive.

14. Railroad's Indemnities and Guaranties. The Railroad will save, indemnify and keep harmless the Manufacturer from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Locomotive or the use or operation thereof. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the Locomotive, as provided in Article 5 hereof, or the termination of this agreement in any manner whatsoever.

The Railroad will bear the risk and shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of the Locomotive; provided, however, that the Manufacturer and any successor or successors to its manufacturing property and business shall not, as to the Locomotive, be relieved from its guaranty covering workmanship and material hereinbefore in Article 9 set forth.

15. Patent Indemnities. The Manufacturer, for itself and any successor or successors to its manufacturing property and business will save, indemnify and keep harmless the Railroad from and against any and all royalties, damages, claims, suits, judgments and costs that

may result from the use of any patented article on the Locomotive at the time of delivery, except with regard to any appliances, devices or materials specified or required by the Railroad and not included in the Manufacturer's standard specifications; and the Railroad will indemnify and save harmless the Manufacturer from and against any and all royalties, damages, claims, suits, judgments and costs that may result from the sale and use of any patented article on the Locomotive specified or required by the Railroad and not included in the Manufacturer's standard specifications.

The Railroad agrees that it will give prompt notice in writing to the Manufacturer of the commencement of any action in respect of which the Manufacturer may be charged with liability hereunder, and the Manufacturer agrees to give prompt notice in writing to the Railroad of the commencement of any action in respect of which the Railroad may be charged with liability hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this agreement or the termination of this agreement in any manner.

16. Assignments by the Manufacturer. All or any of the rights, benefits and advantages of the Manufacturer under this agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturer and reassigned by any assignee at any time and from time to time, provided, however, that no such assignment shall subject any assignee to or relieve the Manufacturer or the successor or successors to its manufacturing property and business from any of the obligations of the Manufacturer to construct and deliver the Locomotive herein contracted to be delivered in accordance with the specifications or to respond to its guaranties, warranties or indemnities contained in Articles 9 and 15 hereof, or relieve the Railroad of its obligation to the Manufacturer under Articles 14 and 15 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment and protect both the Manufacturer and any assignee.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address

of the assignee, and such assignee shall by virtue of such assignment acquire all of the Manufacturer's right, title and interest in and to the Locomotive and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee.

The Railroad recognizes that it is the custom of locomotive manufacturers to sell or discount agreements of this character and understands that the sale of this agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the purchase of this agreement or of all or any of the rights of the Manufacturer hereunder and for the purpose of inducing such purchase, that in the event of such purchase and of the assignment of this agreement by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid purchase price or such part thereof as may be assigned, together with interest thereon as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer or the successor or successors to its manufacturing property and business in respect of the Locomotive or the manufacture, construction, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing property and business. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer and the successor or successors to its manufacturing property and business. The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Railroad to waive any remedies which it might otherwise possess for the enforcement of any and all such obligations of the Manufacturer as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by

payment to the Manufacturer of the consideration for the purchase and assignment of this agreement.

In the event of any such sale, transfer or assignment, or successive sales, transfers or assignments by the Manufacturer, of title to the Locomotive and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, whenever requested by such vendee, transferee or assignee, change the name plates to be attached on each side of the Locomotive so as to indicate the title of such vendee, transferee or assignee to such Locomotive and its succession to the rights of the Manufacturer hereunder, such plates to bear such words or legend as shall be specified by said vendee, transferee or assignee, subject to requirements of the laws of the States in which the Locomotive shall be operated relating to such plates for use on equipment covered by conditional sale agreements relating to railroad equipment. The cost of obtaining and attaching the first series of such substituted plates will be borne by the Manufacturer. The cost of obtaining and attaching plates in connection with any subsequent assignment will be borne by such subsequent vendee, transferee or assignee.

17. Successors to and Assignments by the Railroad. The Railroad hereby represents and warrants that its execution of this agreement and its assumption and undertaking of the obligations, duties and liabilities hereof have been expressly authorized and that all the obligations of the Railroad then existing or to accrue under this agreement shall be assumed as a general obligation by any person or corporation acquiring title to or possession of the railways and properties of the Railroad, and that upon any sale, lease, transfer or assignment of said railways or properties any person or corporation acquiring title thereto or possession thereof shall also, as a condition to such acquisition, be bound by all such obligations.

The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this agreement nor transfer possession of said Locomotive to any other firm, person or corporation without first obtaining the written consent of the Manufacturer to such sale, assignment or transfer.

18. DEFAULTS. In the event that any one or more of the following events of default shall occur, to wit:

(a) The Railroad fails to pay in full when due any installment of principal or of interest at the time and in the manner hereinbefore contracted to be paid as provided in Article 3 hereof; or

(b) The Railroad shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this agreement on its part to be kept and performed; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, is filed by or against the Railroad and the trustee or trustees fail to adopt this agreement within 30 days of the date of his or their appointment unless such petition is dismissed prior to the expiration of such 30 days; or

(d) Any proceedings are commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions and the trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with such proceedings fail to adopt and assume and agree to perform the terms and obligations of this agreement within 30 days of the date of his or their appointment, unless such proceedings are dismissed prior to the expiration of such 30 days; or

(e) The Railroad transfers or attempts to transfer its interest in or under this agreement or possession of the Locomotive without the consent of the Manufacturer;

then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire purchase price of the Locomotive, together with the interest thereon then accrued

and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of such balance of purchase price and interest shall, to the extent permitted by law, bear interest from the date of such declaration at the rate of 6% per annum and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the purchase price of the Locomotive so payable, with interest thereon as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Manufacturer may at its election (and, if before sale or before full performance of this agreement all costs and expenses of the Manufacturer incidental to any such default and to the enforcement by the Manufacturer of the provisions hereof, and all sums which shall then have become due and payable by the Railroad hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this paragraph as aforesaid, shall have been paid by the Railroad, and all other existing defaults shall have been remedied, or provisions therefor satisfactory to the Manufacturer shall have been made, then and in every such case the Manufacturer will) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed and no such declaration or termination had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this agreement and that no such waiver, rescission or annulment shall limit or affect the Manufacturer's right, upon any other default, or impair any rights or remedies consequent thereon.

19. Remedies. Upon the happening of an event of default as hereinabove provided then at any time thereafter and during the continuance of such default the Manufacturer may, without any notice or demand except as required by this agreement or except to the extent necessary in order to comply with any mandatory requirements of law, take or cause to be taken by its agent or agents immediate possession of the Locomotive and/or any replacements and improvements, and all present and future attachments and accessories thereof, without

liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from the use and possession of the Railroad and for such purpose may enter upon the Railroad's premises where the Locomotive may be located, and may use and employ in connection with such removal any supplies, services and aids, and any available trackage and other facilities or means of the Railroad, with or without process of law; and the Railroad shall deliver the Locomotive with all replacements, improvements, equipment, attachments and accessories thereof, at its own cost at such place or places on its railroad as the Manufacturer may reasonably designate and for such purpose move or draw the Locomotive in the usual manner and at the customary speed of trains, and in case of such retaking or delivery the Manufacturer shall have the right to store the same upon the premises of the Railroad without charge until the Manufacturer shall desire to remove the same therefrom. It is hereby expressly agreed by the Railroad that performance of this agreement to deliver the Locomotive as hereinbefore provided is of the essence of the agreement between the parties and that, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. It is further expressly agreed by the Railroad that, until the Manufacturer shall have given notice of its election to retain possession of the Locomotive or until the sale of the Locomotive as hereinafter provided in this Article 19, the Railroad shall not be released from any of its obligations hereunder, including, but not by way of limitation, its obligations under Articles 4 and 7 hereof.

Upon the happening of an event of default as hereinbefore provided then at any time thereafter, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Locomotive as is hereinbefore in this Article 19 provided) may at its election retain the Locomotive as its own and make such disposition thereof as the Manufacturer shall deem fit, and in such event all the Railroad's rights in the Locomotive will thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for

the use of the Locomotive by the Railroad; or the Manufacturer, with or without retaking possession thereof, may, at its election, sell the Locomotive and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Railroad, or of any other party claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Locomotive shall be credited on the amount due to the Manufacturer under the provisions of this agreement. Written notice of the Manufacturer's election to retain the property for its own use may be given to the Railroad by telegram or registered mail at any time during a period of thirty (30) days after declaring the entire purchase price immediately due and payable as hereinbefore provided; and if no such notice is given the Manufacturer shall be deemed to have elected to sell the Locomotive in accordance with the provisions of this Article 19.

To the extent permitted by any such legal requirements, any sale hereunder may be held or conducted at such place and at such time as the Manufacturer may fix, without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine in compliance with any such legal requirements, provided that the Railroad shall be given written notice of such sale as provided in any such applicable legal requirements, but in any event no less than ten (10) days prior thereto, by telegram or registered mail addressed to the Railroad. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Manufacturer may itself bid for and become the purchaser of the Locomotive so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in the next to the last paragraph of this Article

19), and in payment of such purchase price the Manufacturer shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Manufacturer by the Railroad hereunder.

Each and every power or remedy hereby specifically given to the Manufacturer shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default, or an acquiescence therein.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this agreement, the Railroad shall and it hereby undertakes and promises to pay the amount of such deficiency to the Manufacturer upon demand, and if the Railroad fails to pay such deficiency the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable attorneys' fees and other costs and expenses incurred by the Manufacturer in enforcing its remedies under the terms of this agreement or otherwise provided at law or in equity. In the event that the Manufacturer brings any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable attorneys' fees and such other costs and expenses, and the amount thereof shall be included in such judgment.

20. Applicable State Laws. Any provision of this agreement prohibited by any applicable law of any State, or which by any appli-

cable law of any State would convert this agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this agreement; provided that nothing herein shall prevent this agreement from being effective as a chattel mortgage in any State under the laws of which reservations of title to personal property as security for the payment of the purchase price thereof are held to be chattel mortgages. Where, however, the conflicting provisions of any applicable State Law may be waived they are hereby waived by the Railroad to the full extent permitted by law, to the end that this agreement shall be deemed to be a conditional sale and enforced as such.

The Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of the Locomotive and to sell it and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder, except such notices as are expressly required by the terms of this agreement, and any and all rights of redemption.

21. Extension Not a Waiver. Any extension of time granted by the Manufacturer to the Railroad for the payment of any sum due under this agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Manufacturer reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

22. Recording. The Railroad will cause this agreement and any supplements hereto and the first assignment thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer of its title to the Locomotive and its rights under this agreement, or for the purpose of carrying out the intention of this

agreement; and the Railroad will promptly furnish to the Manufacturer certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturer.

23. Payment of Expenses. The Railroad will pay all costs, charges and expenses, except the counsel fees of the Manufacturer, incident to the preparation, printing, execution, acknowledgment, filing, registering and recording of this agreement, of the first assignment by the Manufacturer of title to the Locomotive, of any instrument supplemental hereto or amendatory hereof and of any declaration of the payment in full of the purchase money due hereunder.

24. Notice. Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at Salt Lake City, Utah, or at such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder to Alco Products, Incorporated shall be deemed to be properly served if delivered or mailed to Alco Products, Incorporated at 30 Church Street, New York 8, N. Y., or at such other address as may have been furnished in writing to the Railroad by Alco Products, Incorporated. Any notice hereunder to any assignee of Alco Products, Incorporated or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Manufacturer or the Railroad, as the case may be, by such assignee.

25. Manufacturer. The term "Manufacturer" as used herein shall, unless the context otherwise requires, mean Alco Products, Incorporated before any assignment of all and any rights of Alco Products, Incorporated and after assignment of all the rights of Alco Products, Incorporated the assignee for the time being of such rights; and after any assignment with respect to less than all of the rights hereunder, both the assignee for the time being of each such partial assignment as regards such rights and also the assignor as regards any rights hereunder not so assigned.

26. Execution of Counterparts. This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together will constitute but one and the same contract, which will be sufficiently evidenced by any such original counterpart.

27. Article Headings. All article, paragraph or division headings are inserted for convenience only and will not affect any construction or interpretation of this agreement.

28. Modification of Agreement. This agreement of conditional sale, together with the specifications hereinabove referred to, constitutes the entire agreement between the Railroad and the Manufacturer with respect to the sale of the Locomotive herein referred to. No variation or modification of this agreement and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly authorized officers of the Manufacturer and the Railroad.

29. Law Governing. This agreement shall be construed to be a contract made under and pursuant to the laws of the State of New York; but the Manufacturer shall be entitled to such additional rights arising out of the filing, registration and recording hereof and of any assignment hereof as shall be conferred by the laws of the several States in which this agreement or any assignment hereof shall be filed, registered and recorded.

In Witness Whereof, Alco Products, Incorporated has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions; and Utah Railway Company has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions, all as of the day, month and year first above written.

Alco Products, Incorporated

By W. A. Callison

Vice-President

Attest:

S. Markowitz

Assistant Secretary

[Corporate Seal]

Utah Railway Company

By L. A. Kane

President

Attest:

N. Learned

Secretary

[Corporate Seal]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

I, MARGARET R. TUCKERMAN, a notary public in and for the State and County aforesaid, duly commissioned, sworn and qualified as such and duly authorized to take and certify acknowledgments and proofs of deeds and conveyances of lands, tenements and hereditaments in and for said County, hereby certify that on this 30 day of August, 1955, personally appeared before me in said county W. A. CALLISON and S. MARKOWITZ with whom I am personally acquainted and who are personally well known to me to be, and who I am satisfied are the Vice-President and Assistant Secretary, respectively, of ALCO PRODUCTS, INCORPORATED, one of the corporations described in and which executed the within and foregoing instrument, and known to me to be the identical persons who subscribed their names to and who executed said instrument as such Vice-President and Assistant Secretary, respectively, and I, having first made known to them the contents of said instrument, they being by me duly sworn on their oaths did each for himself and neither for the other severally depose and say and acknowledge that they reside, the said W. A. CALLISON, at Rye, N. Y., and the said S. MARKOWITZ at Brooklyn, N. Y.; that the said W. A. CALLISON is a Vice-President and the said S. MARKOWITZ is an Assistant Secretary of ALCO PRODUCTS, INCORPORATED, one of the corporations described in and which executed the within and foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that they signed the name of said corporation and their own names thereto in their respective capacities by like order; that the said instrument is the free and voluntary act and deed of said corporation, made by virtue of authority from its Board of Directors and that said corporation executed the same; and that they, in their respective capacities as aforesaid, being authorized so to do, signed, sealed, executed and delivered the foregoing instrument in the name and on behalf of said corporation as their own free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses, purposes, objects and consideration therein set forth.

Subscribed, sworn to and acknowledged before me and given under my hand and official seal of office the day and year above written.

I am not a stockholder, director or officer of the within mentioned corporation.

MARGARET R. TUCKERMAN
Notary Public

MARGARET R. TUCKERMAN, Notary Public
State of New York No. 24-4031625
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1957

[Notarial Seal]

My commission expires

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.:

I, F. M. STANSEL, a notary public in and for the State and County aforesaid, residing therein, duly commissioned, sworn and qualified as such and duly authorized to take and certify acknowledgments and proofs of deeds and conveyances of lands, tenements and hereditaments in and for said County, hereby certify that on this 13th day of September, 1955, personally appeared before me in said County L. A. KANE and N. LEARNED with whom I am personally acquainted and who are personally well known to me to be, and who I am satisfied are the President and Secretary, respectively, of Utah Railway Company, one of the corporations described in and which executed the within and foregoing instrument, and known to me to be the identical persons who subscribed their names to and who executed said instrument as such President and Secretary, respectively, and I, having first made known to them the contents of said instrument, they being by me duly sworn on their oaths did each for himself and neither for the other severally depose and say and acknowledge that they reside the said L. A. KANE, at Salt Lake City, Utah, and the said N. LEARNED, at Salt Lake City, Utah, that the said L. A. KANE is the President and the said N. LEARNED is the Secretary of Utah Railway Company, one of the corporations described in and which executed the within and foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that they signed the name of said corporation and their own names thereto in their respective capacities by like order; that the said instrument is the free and voluntary act and deed of said corporation, made by virtue of authority from its Board of Directors and that said corporation executed the same; and that they, in their respective capacities as aforesaid, being authorized so to do, signed, sealed, executed and delivered the foregoing instrument in the name and on behalf of said corporation as their own free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses, purposes, objects and consideration therein set forth.

Subscribed, sworn to and acknowledged before me and given under my hand and official seal of office the day and year above written.

I am not a stockholder, director or officer of the within mentioned corporation.

F. M. STANSEL
Notary Public

[Notarial Seal]

My commission expires
January 3, 1957

AGREEMENT AND ASSIGNMENT, dated as of July 1, 1955, between ALCO PRODUCTS, INCORPORATED, a corporation organized under the laws of the State of New York with an office in the City and State of New York (hereinafter called the "Manufacturer"), and UNITED STATES SMELTING REFINING AND MINING COMPANY, a corporation organized under the laws of the State of Maine with an office in the City of Boston, State of Massachusetts (hereinafter called the "Assignee").

WHEREAS, the Manufacturer and UTAH RAILWAY COMPANY, a corporation organized under the laws of Utah with an office in the City of Salt Lake City, State of Utah (hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement dated as of July 1, 1955 (hereinafter called the "Conditional Sale Agreement"), covering the manufacture, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of One (1) 1600 H. P. (6-motor) Diesel Electric Road Switching Locomotive bearing the Railroad's Road Number 306, all as more particularly described therein (a counterpart of the Conditional Sale Agreement being prefixed hereto), for an aggregate purchase price of $202,112.75, to be paid in installments as therein provided.

NOW, THEREFORE, this Agreement and Assignment Witnesseth that in consideration of the sum of one dollar ($1) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Manufacturer hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns, all the right, title and interest of the Manufacturer under the Conditional Sale Agreement (except the right to manufacture and the right to receive reimbursement for taxes as provided in Article 4 thereof and adjustments for freight and insurance to the extent provided for therein) and all the right, title and interest of the Manufacturer in and to the locomotive (hereinafter called "Locomotive") in respect of which the Assignee shall make payment as provided in Article 6 hereof and in and to any and all amounts

(other than those hereinabove excluded) which may be or become due or owing by the Railroad to the Manufacturer under the Conditional Sale Agreement, together with all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Manufacturer or of any successor or successors to its manufacturing properties and business in respect of its obligations to construct and deliver the Locomotive or in respect of its obligations contained in Articles 9 and 15 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Manufacturer or the Assignee under Articles 3, 14 and 15 of the Conditional Sale Agreement. Notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 thereof, all obligations of the Manufacturer to the Railroad in respect of the Locomotive shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer and any successor or successors to its manufacturing properties and business. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but without expense and liability to the Manufacturer and for the sole benefit of the Assignee.

2. The Manufacturer will construct the Locomotive in full and complete accordance with the Conditional Sale Agreement and will deliver it on completion to the Railroad free of all liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the

Conditional Sale Agreement, set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants that it has good and lawful right to sell the Locomotive as aforesaid; and that it will warrant and defend the same against the demands of all persons whomsoever based on claims originating prior to the delivery of the Locomotive by the Manufacturer to the Railroad; all subject however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The rights of the Assignee to the purchase price of the Locomotive accepted by the Railroad, and interest thereon, as well as any other rights which have been assigned hereunder, shall not be subject to any defense, offset, counterclaim or recoupment whatsoever arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any obligations in respect of the manufacture or delivery of the Locomotive or under Articles 9 and 15 of the Conditional Sale Agreement nor subject to any defense, offset, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing business. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and the successor or successors to its manufacturing properties and business and shall not be enforceable against the Assignee or any party or parties in whom title to the Locomotive or the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this assignment or transfer or of successive sales, assignments or transfers. The Manufacturer will save, indemnify and keep harmless the Assignee from and against any and all royalties, damages, claims, suits, judgments and costs that may result from the use of any patented article on the Locomotive at the time of delivery, except with regard to any appliances, devices or materials specified or required by the Railroad and not included in the Manufacturer's standard specifications.

4. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously placed and fastened on each side of the Loco-

motive, at the time of delivery of the Locomotive to the Railroad, a metal plate bearing the words—

"United States Smelting Refining and Mining Company, Owner, as Assignee of Alco Products, Incorporated, Manufacturer and Prior Owner."

5. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Locomotive therein described.

6. The Assignee, as and when the Locomotive is accepted by the Railroad pursuant to the Conditional Sale Agreement, will pay to the Manufacturer Two Hundred Two Thousand One Hundred Twelve Dollars and Seventy-five Cents ($202,112.75), representing as stated in the Conditional Sale Agreement the purchase price of the Locomotive, together with interest thereon, if any, computed at the rate of 3% per annum from the date of the arrival of the Locomotive at Utah Railway Junction, Utah, as shown on the Certificate of Arrival thereof to the date that such payment therefor is made, upon the receipt by the Assignee of the following documents, in form and substance satisfactory to it:

(a) A Bill of Sale from the Manufacturer to the Assignee, transferring to the Assignee title to the Locomotive so delivered and warranting that said title was free, as of the time of delivery to the Railroad, of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, that said title has been validly retained by the Manufacturer subject only to said excepted rights, and that the Manufacturer has not, since that time, done or omitted to do any act the result of which has impaired the title of the Manufacturer;

(b) A Certificate of Acceptance signed by an authorized representative of the Railroad stating that the Locomotive covered by such Certificate has been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of the Conditional Sale Agreement, and

further stating that there was plainly, distinctly, permanently and conspicuously placed and fastened on each side of the Locomotive at the time of its acceptance a metal plate bearing the words in letters not less than one inch in height:

"United States Smelting Refining and Mining Company, Owner, as Assignee of Alco Products, Incorporated, Manufacturer and Prior Owner";

(c) A duplicate of the Manufacturer's invoice covering the Locomotive so accepted.

7. The Assignee may assign its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder in respect to the Locomotive. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

8. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed for a valid consideration and that it is a valid existing agreement and, according to its terms, binding upon the parties thereto and that said agreement is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Agreement and Assignment is dated for convenience July 1, 1955, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

10. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York.

In Witness Whereof, the Manufacturer and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, as of the day and year first above written.

Alco Products, Incorporated

By W. A. Callison

Vice-President

[Corporate Seal]

Attest:

S. Markowitz

Assistant Secretary

United States Smelting Refining and Mining Company

By F. S. Mulock

President

[Corporate Seal]

Attest:

Francis Fiske

Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

I, MARGARET R. TUCKERMAN, a notary public in and for the State and County aforesaid, duly commissioned, sworn and qualified as such and duly authorized to take and certify acknowledgments and proofs of deeds and conveyances of lands, tenements and hereditaments in and for said County, hereby certify that on this 30 day of August, 1955, personally appeared before me in said County W. A. CALLISON and S. MARKOWITZ with whom I am personally acquainted and who are personally well known to me to be, and who I am satisfied are the Vice-President and Assistant Secretary, respectively, of ALCO PRODUCTS, INCORPORATED, one of the corporations described in and which executed the within and foregoing instrument, and known to me to be the identical persons who subscribed their names to and who executed said instrument as such Vice-President and Assistant Secretary, respectively, and I, having first made known to them the contents of said instrument, they being by me duly sworn on their oaths did each for himself and neither for the other severally depose and say and acknowledge that they reside, the said W. A. CALLISON at Rye, N. Y., and the said S. MARKOWITZ at Brooklyn, N. Y., that the said W. A. CALLISON is a Vice-President and the said S. MARKOWITZ is an Assistant Secretary of ALCO PRODUCTS, INCORPORATED, one of the corporations described in and which executed the within and foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that they signed the name of said corporation and their own names thereto in their respective capacities by like order; that the said instrument is the free and voluntary act and deed of said corporation, made by virtue of authority from its Board of Directors and that said corporation executed the same; and that they, in their respective capacities as aforesaid, being authorized so to do, signed, sealed, executed and delivered the foregoing instrument in the name and on behalf of said corporation as their own free and voluntary act and deed and as the free and volutnary act and deed of said corporation for the uses, purposes, objects and consideration therein set forth.

Subscribed, sworn to and acknowledged before me and given under my hand and official seal of office the day and year above written.

I am not a stockholder, director or officer of the within mentioned corporation.

MARGARET R. TUCKERMAN
Notary Public

MARGARET R. TUCKERMAN, Notary Public
State of New York No. 24-4031625
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1957

[Notarial Seal]

My commission expires

COMMONWEALTH OF MASSACHUSETTS }
COUNTY OF SUFFOLK } ss.:

I, JAMES R. SHARKEY, a notary public in and for the State and County aforesaid, residing therein, duly commissioned, sworn and qualified as such and duly authorized to take and certify acknowledgments and proofs of deeds and conveyance of lands, tenements and hereditaments in and for said County, hereby certify that on this 21st day of September, 1955, personally appeared before me in said County F. S. MULOCK and FRANCIS FISKE with whom I am personally acquainted and who are personally well known to me to be, and who I am satisfied are the President and Secretary, respectively, of UNITED STATES SMELTING REFINING AND MINING COMPANY, one of the corporations described in and which executed the within and foregoing instrument, and known to me to be the identical persons who subscribed their names to and who executed said instrument as such President and Secretary, respectively, and I having first made known to them the contents of said instrument, they being by me duly sworn on their oaths did each for himself and neither for the other severally depose and say and acknowledge that they reside, the said F. S. MULOCK at Brookline, Massachusetts and the said FRANCIS FISKE at Brookline, Massachusetts; that the said F. S. MULOCK is the President and the said FRANCIS FISKE is the Secretary of UNITED STATES SMELTING REFINING AND MINING COMPANY, one of the corporations described in and which executed the within and foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Executive Committee of the Board of Directors of said corporation and that they signed the name of said corporation and their own names thereto in their respective capacities by like order; that the said instrument is the free and voluntary act and deed of said corporation, made by virtue of authority from its Board of Directors and that said corporation executed the same; and that they, in their respective capacities, as aforesaid, being authorized so to do, signed, sealed, executed and delivered the foregoing instrument in the name and on behalf of said corporation as their own free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses, purposes, objects and consideration therein set forth.

Subscribed, sworn to and acknowledged before me and given under my hand and official seal of office the day and year above written.

I am not a stockholder, director or officer of the within mentioned corporation.

JAMES R. SHARKEY
Notary Public

My commission expires
September 6, 1957

[Notarial Seal]

The foregoing Agreement and Assignment is acceptable to the undersigned and will be recognized by it.

In Witness Whereof, the undersigned has caused its name to be signed and its corporate seal to be hereunto affixed and duly attested by its officers thereunto duly authorized as of the day and year first above written.

Utah Railway Company

By L. A. Kane

President

Attest:

N. Learned

Secretary

[Corporate Seal]

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.:

I, F. M. STANSEL, a notary public in and for the State and County aforesaid, residing therein, duly commissioned, sworn and qualified as such and duly authorized to take and certify acknowledgments and proofs of deeds and conveyances of lands, tenements and hereditaments in and for said County, hereby certify that on this 13th day of September, 1955, personally appeared before me in said County L. A. KANE and N. LEARNED with whom I am personally acquainted and who are personally well known to me to be, and who I am satisfied are the President and Secretary, respectively, of UTAH RAILWAY COMPANY, one of the corporations described in and which executed the within and foregoing instrument, and known to me to be the identical persons who subscribed their names to and who executed said instrument as such President and Secretary, respectively, and I, having first made known to them the contents of said instrument, they being by me duly sworn on their oaths did each for himself and neither for the other severally depose and say and acknowledge that they reside, the said L. A. KANE at Salt Lake City, Utah and the said N. LEARNED at Salt Lake City, Utah; that the said L. A. KANE is the President and the said N. LEARNED is the Secretary of UTAH RAILWAY COMPANY, one of the corporations described in and which executed the within and foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that they signed the name of said corporation and their own names thereto in their respective capacities by like order; that the said instrument is the free and voluntary act and deed of said corporation, made by virtue of authority from its Board of Directors and that said corporation executed the same; and that they, in their respective capacities as aforesaid, being authorized so to do, signed, sealed, executed and delivered the foregoing instrument in the name and on behalf of said corporation as their own free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses, purposes, objects and consideration therein set forth.

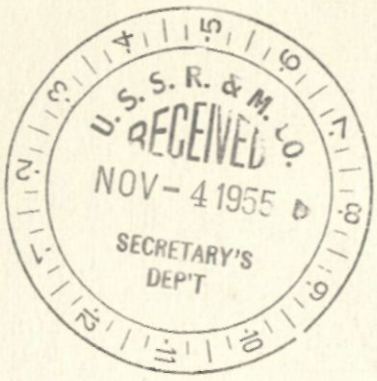
Subscribed, sworn to and acknowledged before me and given under my hand and official seal of office the day and year above written.

I am not a stockholder, director or officer of the within mentioned corporation.

F. M. STANSEL
Notary Public

My commission expires
January 3, 1957

[Notarial Seal]



Rec'd with letter from
L. A. Kane, Pres. & Gen. Mgr.
of Utah Railway Co., to
F.F. 10/31/55

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